

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>89-11144</u>
ANN MARKS JOHNSON)	
2526 Milledgeville Road, F-2)	FILED
Augusta, Georgia 30904)	at 10 O'clock & 12 min P.M.
SS# 256-50-3084)	Date: 1-26-90
)	
Debtor)	

ORDER

This Chapter 13 proceeding came before the court for confirmation. General Motors Acceptance Corporation (hereinafter "GMAC") objects to confirmation contending that the debtor's proposed plan fails to meet the confirmation criteria of "good faith" under 11 U.S.C. §1325(a)(3).¹

The debtor, Ann Marks Johnson, proposes a composition Chapter 13 plan paying Two Hundred Seventeen and No/100 (\$217.00) Dollars per month to the Chapter 13 trustee over a period of sixty (60) months to pay forty percent (40%) of allowed secured claims with the balance of payments distributed to unsecured creditors pro rata. The balance of secured claims are to be paid under the debtor's estranged spouse's companion Chapter 13 case. See, footnote 1, supra. From the evidence presented at the confirmation hearing, this court makes the following findings

¹GMAC also has objected to confirmation on "good faith" grounds in the debtor's spouse's companion case: In re: Carey Johnson, Chapter 13 Case No. 89-11145. See, order entered this date in the companion case.

of fact and conclusions of law.

This is not the debtor's first bankruptcy proceeding. On July 20, 1987, the debtor using the same name as herein but under social security No. 256-50-3184 and Cary T. Johnson under social security No. 256-50-5042 brought their joint petition as husband and wife for relief under Chapter 7 of Title 11 United States Code. See, In re: Cary T. Johnson and Ann Marks Johnson, Chpt. 7 Case No. 87-10776 (Bankr. S.D. Ga., 1987). Discharge was entered December 21, 1987. In August, 1988, the debtor using the name Madeline A. Johnson and social security number 256-50-3184 and debtor's spouse, applied to Johnson Motor Company, Augusta, Georgia to purchase a 1988 Oldsmobile automobile. The application was approved based upon the information submitted by the debtor and her spouse. The debtor and spouse used the manufacturer's rebate as their down payment, financed the balance with GMAC and subsequently failed to make a single payment on the obligation. The motor vehicle was eventually repossessed by self-help without objection. On January 13, 1989, the debtor, under the name Ann T. Marks and social security number 256-50-2144 purchased a 1989 Chevrolet automobile and financed it with GMAC. The debtor made two payments on this obligation prior

to her filing this Chapter 13 proceeding on August 3, 1989 under the name Ann Marks Johnson and social security number 256-50-3084.

Although a comprehensive definition of good faith is not practical, broadly speaking, the basic inquiry should be whether under the circumstances of the case there has been an abuse of the provisions, purpose and spirit of Chapter 13 in the proposed plan. Kitchens v. Georgia Railroad Bank & Trust Co., 702 F.2d 885 (11th Cir. 1983). As previously noted by this court in other cases, the Kitchens decision sets out a non-exhaustive list of thirteen (13) factors to be considered in a good faith analysis:

1. The amount of the debtor's income from all sources;
2. The living expenses of the debtor and his dependents;
3. The amount of attorneys fees;
4. The probable or expected duration of the debtor's Chapter 13 plan;

5. The motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13;
6. The debtor's degree of effort;
7. The debtor's ability to earn and the likelihood of fluctuation in his earnings;
8. Special circumstances such as inordinate medical expenses;
9. The frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessor;
10. The circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealing with his creditors;
11. The burden which the plan's administration would place upon the trustee;
12. The substantiality of repayments; and
13. The potential nondischargeability of debt in a Chapter 7 proceeding.

Kitchens v. Georgia Railroad Bank & Trust Company, 702 F.2d 885, 888 (11th Cir. 1983).

The application of the following Kitchens criteria to the

facts of this case reveal that this plan fails to meet the confirmation criteria of good faith.

1. The motivations of the debtor and her sincerity in seeking relief under the provisions of Chapter 13.

In 1987 this debtor using the name Ann Marks Johnson and social security No. 256-50-3184 sought and obtained a discharge under Chapter 7 of the Bankruptcy Code. Within eight months of obtaining the discharge, this debtor using a different name contracted with GMAC to finance the purchase of an automobile and never made a payment on the contract. Subsequent to the repossession of that automobile, the debtor again financed the purchase of another automobile with GMAC using yet another name and different social security number. On the second car the debtor made two payments over the seven-month period prior to her again seeking the protection of this court by her present Chapter 13 filing using yet still a different social security number. Now under Chapter 13 of the Bankruptcy Code this debtor proposes to pay forty percent (40%) of her secured debt, the balance of which is to be paid by the debtor's spouse in his separate Chapter 13 proceeding, with the balance of payments to be distributed pro-rata to the unsecured creditors. Since her discharge in the previous Chapter 7 case, this debtor using various names and

social security numbers has purchased and financed two automobiles with GMAC. While some of the variations in the social security numbers used by the debtor could

be attributed to clerical error, the frequency of use of the variations in number and name clearly establishes a pattern of intent to deceive. By use of the various names and social security numbers, the debtor attempted to hide her past credit history from GMAC. Beyond the statement of the debtor that the social~security number now used is in fact her correct number, this court has no way of knowing which, if any, of the many used social security numbers are in fact correct. From this pattern of deception, it is apparent that the debtor's goal in seeking relief under Chapter 13 is not to put forth a plan for repayment of her debts to the extent possible and financial rehabilitation, but simply the avoidance of debt.

2. The frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessor.

This is the second bankruptcy proceeding brought by this debtor in two (2) years. While that fact alone is not indicative of a bad faith filing, that fact in conjunction with the use of different social security numbers in each filing evidences a lack of commitment to the spirit and purpose of Chapter 13, rehabilitation through repayment, and evidences an attempted manipulation of the bankruptcy process.

3. The circumstances under which the debtor has contracted her debts and her demonstrated bona fides, or lack of same, in dealing with her creditors.

Shortly after obtaining her discharge in the previous Chapter 7

proceeding, this debtor through the use of a different name entered into a credit transaction with GMAC for the purchase of a 1988 Oldsmobile for which she never made a payment. Subsequent to the repossession of that automobile, the debtor using yet

a different name and a different social security number purchased another vehicle financing it with GMAC and, in this instance, made two payments over the seven-month period between the date of purchase and the date of filing for relief under Chapter 13. The actions of the debtor regarding the use of various names, various~social security numbers and payment history in her dealings with GMAC was a patent attempt to hide her past credit history from GMAC and clearly evidences bad faith in dealing with this creditor in each transaction.

4. The potential nondischargeability of debt in a Chapter 7 proceeding.

The provisions of 11 U.S.C. §727(a)(8) prevent the granting of a discharge under Chapter 7 of Title 11 United States Code to this debtor for a period of six (6) years from July 20, 1987. None of these debts of the debtor are currently dischargeable in a Chapter proceeding.

While one of the factors alone may not be a sufficient basis for finding that the debtor lacks the requisite "good faith", by combining these factors, the evidence is clearly sufficient to conclude that the debtor's filing and plan are not proposed in good

faith. Confirmation must, therefore, be denied. The debtor; through her dealings with GMAC and by her misrepresentations to this court in her petition and schedules as to her correct social security number in this and/or the previous Chapter 7 proceeding, has failed to demonstrate a commitment to the spirit and purpose of Chapter 13, rehabilitation and repayment. "[W]henver a Chapter 13 petition appears to be tainted with a questionable purpose, it is incumbent upon the bankruptcy courts to examine and question the debtor's motives. If the court discovers unmistakable manifestations of bad faith . . . confirmation must be denied." In re: Waldron, 785 F.2d 936, 941 (11th Cir. 1986). In addition, when bad faith is evident and the debtor lacks a commitment to the rehabilitative intent of Chapter 13, and it is apparent to this court that the debtor's filing is an

abuse of the bankruptcy process, dismissal of the debtor's case is appropriate. See,
11 U.S.C. §105.

It is therefore ORDERED that confirmation of the debtor's plan is
denied, and the Chapter 13 case is dismissed.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 26th day of January, 1990.